



August 6, 2001

Ms. Angela K. Washington
Cowles & Thompson
901 Main Street, Suite 4000
Dallas, Texas 75202-3793

OR2001-3419

Dear Ms. Washington:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150319.

The Town of Addison, (the "town"), which you represent, received a request for copies of airport activity reports, marketing reports, rent rolls, and management reports provided to the town by the private manager of the town's airport for January, February, March, April, and May of 2001, as well as electronic copies of all lease forms used for airport property since January 1, 2001 to date. You inform us that this request seeks the identical information sought by the same requestor in an earlier request to the town, with the addition of the requested information for the month of May, which you state did not exist at the time of the current request. Your earlier request resulted in a ruling from this office, Open Records Letter No. 2001-3138 (2001). You state that you maintain your position set forth in the earlier request for a ruling from this office. In that request, you raised sections 552.101, 552.103, and 552.110 of the Government Code to except the requested information from disclosure. In addition, you informed us that it was the town's intention under section 552.305 of the Government Code to notify any third parties who might have a proprietary interest in the information of the request. This office received no arguments from third parties. We did receive arguments submitted to this office by the representative of the requestor. *See* Gov't Code § 552.304.¹

¹We note that the representative of the requestor informs this office that the requestor "has repeatedly requested the information on [sic] an electronic media, [and that] the town has steadfastly refused to provide the information in the requested format." Section 552.228 of the Government Code provides in part that

(b) If public information exists in an electronic or magnetic medium, the requestor may request a copy either on paper or in an electronic medium, such as on diskette or on magnetic tape. A governmental body shall provide a copy in the requested medium if:

As the current request seeks the identical information previously requested and ruled upon by this office in ORL 2001-3138, with the exception of the May report, we conclude you must rely on that ruling as a previous determination and release the information requested in accordance with ORL 2001-3138. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely the same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

With regard to the May report, you inform us that such a report did not exist at the time the request was received. The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Therefore, the town has no duty to provide the requestor with a report for May at this time.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

(1) the governmental body has the technological ability to produce a copy of the requested information in the requested medium;

(2) the governmental body is not required to purchase any software or hardware to accommodate the request; and

(3) provision of a copy of the information in the requested medium will not violate the terms of any copyright agreement between the governmental body and a third party.

(c) If a governmental body is unable to comply with a request to produce a copy of information in a requested medium for any of the reasons described by this section, the governmental body shall provide a paper copy of the requested information or a copy in another medium that is acceptable to the requestor. A governmental body is not required to copy information onto a diskette or other material provided by the requestor but may use its own supplies.

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 150319

Enc. Submitted documents

c: Mr. Bob Huckabee
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(w/o enclosures)